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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th October, 2022

No. 13/1/9906-HII(2)-2022/15928.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 96/2020, dated 02.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KIRPA KUMAR S/O SHRI RAM SET, BHASAH BUIJURG BHAISHI, UTTER PARDESH
(Workman)

AND

APEX MOTORS, PLOT NO.45, INDUSTRIAL AREA, PHASE - II, CHANDIGARH (Management)

AWARD

1. Kirpa Kumar, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was continuously working as Motor Mechanic since 1st June, 2017 and was in receipt of ₹ 15,000/- per month after deduction of EPF employee contribution. On 14.05.2020, after lock down period, the workman was called by the management and was pressurized to submit the resignation and intimated that the services of the workman are no longer required. The workman intimated the management that termination during the COVID-19 is illegal and is banned by the Government, but the management illegally and forcibly stopped the entry of the workman and thus illegally and arbitrarily terminated the services of the workman w.e.f. 14.05.2020. The services of the workman had been terminated without issuing any charge sheet, calling explanation and without holding any domestic inquiry. No letter of termination has been issued to the workman. The workman had been working since 01.06.2017 and there has been no letter / warning / charge sheet issued to the workman by any official of the management up to the date of illegal termination. The workman again approached the management along with other workmen for reporting for duty on 14.05.2020 but the management selected workmen to report for

Signature of Kirpa Kumar
Digital Signature
Date: 2022.11.22
12:25:09 IST
Reason: Published
Location: Chandigarh

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duty and intimated the workman that his services has already been terminated by the management and was not allowed to report for duties. Work and performance of the workman has been satisfactory and to the entire satisfaction of his superiors / seniors. The workman performed his duties with dedications and his post is permanent / regular. The workman had worked more than 240 days continuously with the management. The management even has not paid wages for the period from January 2019, February 2019, January 2020, February 2020, March 2020, April 2020 and May 2020 and also did not cover the workman under the Employees State Insurance Scheme as well as under the Employee Provident Funds & Misc. Provisions Scheme / Act from the date of applicability of the said scheme. Besides this, the workman has not been provided the statutory benefits of earned leave, casual leave, sick leave, national & festival holidays, bouns under the Payment of Bonus Act, 1965, Gratuity under the Payment of Gratuity Act, 1972, overtime at twice the rate of ordinary wages for working on all weekly off / Sundays, holidays, national & festival holidays. No register of adult worker has been maintained by the management. The management has not issued any appointment letter, identity card, wage slip, leave card and ESI identification card etc. The act and conduct of the management illegally and arbitrarily terminating the services of the workman are in violation of the provisions of the ID Act. The workman has been forced to remain un-employed and is continuing to be out of employment due to high-handedness of the above management. The management has retained the juniors and news appointment has been made against the post on which the workman was working. The act of the management in terminating the services of the workman without adopting proper procedure is *prima facie* illegal, arbitrary and unjustified and as such, it amounts to illegal termination. Prayer is made that the management may be directed to reinstate the workman in service with continuity of service, full back wages along with all consequential benefits on the same post and on the same terms & conditions with seniority.

2. On notice, the management appeared through its authorized representative Shri P. K. Kukreja.

3. On 02.09.2022, learned representative for the workman made the statement, which is recorded separately and reproduced as under :—

"Stated that due to some technical defect, under instruction of my client, I withdraw the present reference with liberty to file the same afresh."

4. Heard. In view of the aforesaid statement, the present industrial dispute is disposed off being not pressed for with a liberty to file a fresh, as prayed for. Appropriate Government be informed. File be consigned to the record room.

The 2nd September, 2022.

(Sd.). . .,

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 27th October, 2022

No. 13/1/9905-HII(2)-2022/15930.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 7/2020, dated 05.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between .

AVDESH KUMAR, S/O SH. CHAND KISHOR, RIO HOUSE NO.176, BAR MAJRA, SAS NAGAR (MOHALI), PUNJAB - 140301 (Workman)

AND

NEWTIME CONTRACTOR & BUILDERS (P) LTD. (THROUGH ITS OWNER/DIRECTORS/ PROPRIETORS /MANAGER) ADDRESS (1): CORP. OFFICE: SCO -57, SECOND FLOOR, SECTOR 20-C, CHANDIGARH - 160020. ADDRESS (2): REG. OFFICE:#3171, SECTOR 21-D, CHANDIGARH -160020 (Management)

AWARD

1. The workman Avdesh Kumar has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the respondent-management is a contractor & builder deals in construction works. The workman was appointed as Sr. Office Assistant on 01.07.2004 at Chandigarh location by the respondent-management and was assigned the work of dropping the cheque in bank, making and serving tea etc. to the clients of the respondent-management and handling of documents of respondent-management. Hence, the applicant-workman is a 'workman' as defined under Section 2(s) of the ID Act. Daily timings of the workman was from 9:00 A.M. to 7:00 P.M. with weekly off. The workman of the workman was controlled, supervised and assessed by Sh. Vivek - Accounts Department and personal file, record of leaves etc. of the workman was maintained by the Human Resource Department. The workman was being paid salary, after deduction of provident fund, ESI, ₹ 10,646/- per month at the time of his removal. The workman had not been paid his salary for the month of July 2018, August 2018 & September 2018 and his bonus of the financial year 201-18. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to the workman nor any inquiry was conducted against him for any misconduct during whole tenure of his work while he was in service. On 30th September, 2018 the workman was told by the management that the services of the workman are no more required by the company and asked the workman not to come on the duty from the next day and also to resign from the service otherwise services of the workman will be terminated. Hence, the management illegally, arbitrarily and mala fide terminated the services of the workman all of sudden without following the mandatory procedure laid down under the provisions of the ID Act. The work on which the workman was deputed is still going on as the work is a regular work of the management. While terminating the services of the workman, the management has utterly violated the various provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The workman had completed 240 days in the 12 calendar months preceding his termination. The workman had submitted demand notice to the management and before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh and the management did not present before the Conciliation Officer and conciliation proceedings failed, accordingly, the Conciliation Officer *vide* Memo No.169 dated 10.01.2020 advised the workman to refer Section 2-A of the Industrial Disputes (Amendment) Act, 2010 and according the present claim. Prayer is made that the workman may be reinstated into service with continuity of service along with all the benefits the workman is entitled to under the provisions of law including full back wages.

2. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 22.09.2022, wherein preliminary objections are raised on the ground that the claim application filed by the applicant-workman is false, frivolous and vexatious and is liable to be dismissed. The applicant-workman has concealed the true and material facts from this Court while instant application. The applicant-workman was appointed as a Peon with the office of the management on 01.07.2004 and not as a Sr. Office Assistant. The applicant was given the work of dropping of documents and other general office boy work. The applicant-workman was not issued the appointment letter, attached by him as annexure with his application. The applicant-workman has purposely fabricated the present document to show employment with the office of the management. Since the applicant-workman was doing the work of the office boy / peon, he was fully aware of the place where the spare letter head of the company where kept. The applicant-workman after falsely preparing the above mentioned appointment letter, has forged the signatures of Varun Bhasin (authorised signatory) of the company. A bare comparison of the appointment letter attached by the applicant and verification letter issued by the management for verification of specimen signature of Shri Varun Bhasin by the bank officials would show that the applicant-workman has falsely fabricated the appointment letter and has forged the signatures of Shri Varun Bhasin. The applicant-workman has claimed that he was receiving an amount of ₹ 10,646/- as salary, which could be ascertained by the account statement attached by him. The applicant-workman has also claimed that he has not been paid the salary for the month of July, August and September, 2018 but the account statement attached by the applicant-workman itself shows that the salary for the month of July 2018 has been paid to him. The management has not paid salary to the applicant for the month of August and September, 2018 for the reason that the applicant-workman never came to the office in the month of August and September, 2018. Post receiving his salary for the month of July, the applicant-workman stopped coming to office of the management. The management inquired about the same from other employees of the office then came to know that the applicant-workman had been involved in some illegal activities and had taken money from other employees namely Ram Abhilakh and Subhash Chand and from other persons as well who are not employees of the management. In August 2018, when Ram Abhilakh and Subhash Chand started asking for their money back from the applicant-workman and threatened to take legal action, the applicant-workman ran away and never came to the office. Ram Abhilakh and Subhash Chand even filed complaints under Section 138 of the Negotiable Instruments Act, wherein the applicant-workman has been declared Proclaimed Person *vide* order dated 05.08.2019. The management never received any conciliation notice from the Assistant Labour Commissioner-cum-Conciliation Officer.

3. On merits, it is admitted that the management is contractor and builder deals in construction works. Further it is admitted being a matter of record that daily timing of the workman was from 9:00 A.M. to 7:00 P.M. with weekly off. The work of the applicant-workman was controlled, supervised and assessed by Shri Vivek - Account Department and personal file, record of leaves etc. of the applicant-workman was maintained by its Human Resource Department. The applicant-workman was being paid salary after deduction of provident fund, ESI and receiving an amount of about ₹ 10,646/- per month. The work on which the applicant-workman was deputed is still going on as the work is regular work of the management. Further similar stand taken as taken in the preliminary objections. Remaining averments of the statement of claim are denied being wrong. Prayer is made that the statement of claim may be dismissed.

4. The replication not intended to be filed.

5. From the pleadings of the parties, following issues were framed *vide* order dated 08.02.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. During the pendency of the present industrial dispute, on 10.08.2022 learned representative for the workman pleaded no instructions. Notice of no instructions was issued to the workman for 29.08.2022,

which received back un-served / un-delivered with the postal endorsement 'no such person in the address'. None appeared on behalf of the workman on 29.08.2022. Under the aforesaid circumstances, it is made out that the workman is not interested in further proceedings of the present industrial dispute.

7. On 05.09.2022, learned representative for the management closed the evidence on behalf of the management.

8. Under the circumstances, the present industrial dispute stands disposed off being not pressed. Consequently, the issues have become redundant. Appropriate Government be informed. File be consigned to the record room.

The 5th September, 2022.

(Sd.). . .,

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th October, 2022

No. 13/1/9902-HII(2)-2022/15932.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 24/2016 dated 29.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KARUN KUMAR S/O SHRI OM PARKASH R/O HOUSE NO. 4541/B/MIG/SUPER,
SECTOR 70, MOHALI (Workman)

AND

1. THE BOARD OF AYURVEDIC UNANI SYSTEM FOR MEDICINE, PUNJAB THROUGH ITS CHAIRMAN, SCO NO. 182, SECTOR 38-D, CHANDIGARH.
2. THE CHAIRMAN BOARD OF AYURVEDIC UNANI SYSTEM FOR MEDICINE, PUNJAB THROUGH ITS CHAIRMAN, SCO NO. 18, SECTOR 38-D, CHANDIGARH (Management)

AWARD

1. Karun Kumar, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is stated that the workman was appointed as Clerk, after due process of selection w.e.f. 19.06.2011 @ ₹ 6,100/- per month and was attached with the Principal Secretary. Services of the workman were terminated on a false and frivolous charges that the workman had poured pressure on the Vice Chairman to regularize the services of the workman. Last extension was given for one year w.e.f. the date of joining *vide* letter dated 05.06.2013 but services of the workman were terminated w.e.f. 19.02.2014 without conducting inquiry into the alleged charges. No charge sheet was issued and no inquiry was held and the workman was terminated from services w.e.f. 19.02.2014 without conducting of inquiry in the alleged charges. Orders of termination of the workman are stigmatic without offering any opportunity, charge sheet, inquiry etc. as held by the various Hon'ble High Courts as well as the Hon'ble Supreme Court of India the orders are stigma to the workman. The workman had put in more than 240 days

of service in each calendar year preceding the date of his illegal termination. The work which the workman was performing was of a continuous nature but by giving periodical appointments given to him from time to time is unfair labour practice as held by the Hon'ble Supreme Court of India as well as by our own Hon'ble High Court of Punjab & Haryana at Chandigarh. The Hon'ble Supreme Court has held that it is retrenchment and is not outside the preview of 2(oo) of the ID Act and therefore non-serving of one month notice prior to termination of the workman is illegal. The workman was not served with a notice of one month before effecting the termination from service nor the workman had been paid one month's wage in lieu thereof as such termination of the workman is void under Section 25-F(a) of the ID Act. The workman had not been paid nor tendered to be paid compensation in terms of Section 25-F(b) of the ID Act, which renders his termination illegal, void and bad in law. The workman had also filed an appeal against the orders of termination which was rejected without recording reason / cogent reasons. Work on which the workman was engaged is still going on and is of a regular nature but in his place new hands have been appointed but services of the workman were terminated which is unlawful and is unfair labour practice. The workman had tried his best to secure employment after termination elsewhere but is still facing unemployment till date. The workman was drawing ₹ 13,500/- per month on the date of his illegal termination. The workman is facing unemployment from the date of his termination till date. Termination of the workman from service w.e.f. 19.02.2014 (afternoon) is illegal, void and bad in law. The workman is deemed to be in service and is entitled to full back wages. Prayer is made that award reinstating the workman in service with full back wages may be passed with heavy costs.

2. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 23.09.2016, wherein preliminary objections are raised on the ground that the present claim is not maintainable under the industrial law. The petitioner-workman has made an attempt to invoke the provisions of the ID Act. The Office of Board of Ayurvedic & Unani Systems of Medicine (*hereinafter in short referred as 'Board'*), would not fall within definition of 'industry' as defined under Section 2(j) of the ID Act as the Board is not performing any business, industrial undertaking or manufacturing activities. Hence, the Board will not fall within the definition of an 'industry'. Even the petitioner-workman is not covered under the definition of a 'workman' as he is not performing any skilled, manual or technical operation in any 'industry'. Hence, the provisions of the ID Act would not apply in this case. The petitioner-workman is not entitled to any reinstatement as he stands removed from service due to his misconduct and misbehaviour with the official. The nature of employment was purely temporary and was of contractual nature and the same were guided by the principle of good conduct. The petitioner-workman was issued a show cause notice and his explanation was found to be unsatisfactory and the petitioner-workman was removed from the temporary contractual service, that too after an inquiry. The petitioner-workman has not come to this Court with clean hands and has intentionally concealing the facts, making false statements and he is trying to mislead the Hon'ble Court.

3. On merits, it is averred that the petitioner-workman had un-authorizedly dropped at the clinic of Vice-Chairman, misbehaved and pressurized the Vice-Chairman to make him a regular employee. The Vice-Chairman gave a complaint to the Chairman, Board orally and in writing regarding the misbehaviour by the petitioner-workman. This complaint was discussed in the Board meeting on 09.01.2014 and it was finalized that a show cause notice be issued to the petitioner-workman and the Chairman may take any action as deemed fit, thereafter. Thereafter show cause notice dated 03.02.2014 was issued and inquiry was held. The employee (workman) came present and participated in the inquiry and submitted his written reply. The same was considered and the employee was found guilty of misconduct. Due to the unsatisfactory reply and explanations given therein the authorities had no opinion but to remove the employee, in view of serious misconduct. The petitioner-workman is trying to mislead this Court by wrong statements. The appointment of the petitioner-workman as Clerk was purely on contract basis and he is not covered under the definition of 'workman' nor the management Board is an 'industry'. Therefore, the present petition / claim

statement is not maintainable under Section 25-H of the ID Act. At the time of appointment of the petitioner-workman it was made clear that the post of the petitioner-workman shall be purely on temporary arrangement and contract basis. The services of the petitioner-workman were never terminated but the petitioner-workman had to be removed from the contract service because of misconduct on his part. The petitioner-workman was also given an opportunity to represent his case before the Chairman of the Board in pursuance of his appeal but the petitioner-workman was unable to produce / file anything in writing in his favour except that the statement made by him that he has nothing more to say than already said in response to the previous proceedings. The Board has not indulged in any lawful activity and action of the Board is just and lawful. Remaining averments of the claim statement are denied as wrong. Prayer is made that the present petition / claim statement be dismissed.

4. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 14.12.2017:—

1. Whether Shri Karun Kumar is not a 'workman' as defined under the ID Act ? OPM
2. Whether the management is not an 'industry' as defined under the ID Act ? OPM
3. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
4. Relief.

6. In evidence, the claimant-workman Karun Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. In cross-examination of AW1 document Exhibit 'W1' to 'W3' are brought into evidence.

Exhibit 'W1' - Copy of reply dated 06.02.2014 to show cause notice in reference to letter No.BAU/Pb:14/175 dated 02.03.2014 filed by Karun Kumar - Clerk to the Chairman, Board.

Exhibit 'W2' - Reply dated 13.12.2014 in reference to show cause notice related to letter No.BAU/Pb:14/231 dated 12.02.2014 filed by Karun Kumar, Clerk to Chairman, Board.

Exhibit 'W3' - Copy of application dated 27.02.2014 moved by Karun Kumar - Clerk to the Chairman-cum-Appellate Authority, Board on the subject of seeking to review the termination order and for reinstatement.

On 14.02.2022 the claimant-workman closed his evidence.

7. On the other hand, the management examined MW1 Ms. Suhinder Kaur, Administrative Officer, Board of Ayurvedic & Unani System of Medicine, Punjab, who tendered affidavit Exhibit 'MW1/A'. During cross-examination of MW1 documents Mark 'MX' and Mark 'MY' were brought into evidence.

Mark 'MX' - Copy of show cause notice bearing No.BAU/Pb./14/175 dated 03.02.2014 issued by the Chairman, Board relating to the complaint moved by Vaid Jagjit Singh - Vice Chairman.

Mark 'MY' - Copy of letter No.BAU/Pb./14/2312 dated 12.02.2014 issued by Registrar, Board to Karun Kumar, requiring him to appear for personal hearing on 13.02.2014 at 3:30 P.M. before the Chairman of Board in connection with the complaint moved by Vaid Jagjit Singh, Vice Chairman of the Board.

On 28.03.2022, learned representative for the management tendered documents Exhibit 'M1' to 'M16'.

Exhibit 'M1' - Copy of the Punjab Ayurvedic & Unani Practitioner Act, 1963.

Exhibit 'M2' - Copy of notification dated 10.05.1976 issued by Punjab Government, Health & Family Planning Department published in the Punjab Government Gazette, Legislative Supplement dated 14th May, 1976.

Exhibit 'M3' - Copy of appointment letter No.BAU/11/1022 dated 19.05.2011 issued to Karun Kumar by Dr. A. S. Thind - Chairman, Board on contract basis for period of 6 months from the date of appointment, salary as per contract is ₹ 6,100/- (sixty one hundred only) per month.

Exhibit 'M4' - Copy of appointment letter No.11/2208 dated 28.11.2014, issued by the Chairman Board, contract for six months from the date of appointment, salary as per contract ₹ 7,000/- per month.

Exhibit 'M5' - Copy of appointment letter No.BAU/Pb/12/1146 dated 31.05.2012 contract period of six months, salary as per DC rate ₹ 7,980/- per month.

Exhibit 'M6' - Copy of appointment letter No.BAU/Pb/12/1146 dated 31.05.2012 contract period of six months, salary as per DC rate ₹ 7,980/- per month.

Exhibit 'M7' - Copy of appointment letter No.BAU/Pb./13/1338 dated 05.06.2013 on contractual basis for period of one year from joining, salary DC rates ₹ 7,980/- per month.

Exhibit 'M8' - Copy of written complaint dated 11.09.2013 by Vaid Jagjit Singh - Vice Chairman, Punjab State Ayurvedic & Unani Systems of Medicine, Punjab to Dr. Tejbir Singh - Chairman, Punjab State Ayurvedic & Unani Systems of Medicine Board on the subject of being pressurized by one boy namely Karan for regularizing his services by coming to his clinic.

Exhibit 'M9' - Copy of show cause notice No.BAU/Pb./14/175 dated 03.02.2014, issued to Karan Kumar by Chairman of Board in connection with the complaint filed by Vaid Jagjit Singh - Vice Chairman.

Exhibit 'M10' - Copy of reply dated 06.02.2014 to show cause notice filed by Karun Kumar to Chairman Board.

Exhibit 'M11' - Copy of letter No.BAU/PB./14231 dated 12.02.2014 issued by Registrar Board to Karun Kumar requiring him to appear for personal hearing on 13.02.2014 at 3:30 P.M. in the Office of Chairman at Director Research & Medical Education, to present his defence.

Exhibit 'M12' - Copy of reply dated 13.02.2014 to show cause notice bearing letter No.BAU/Pb./231 dated 12.02.2014 filed by Karun Kumar to Chairman Board.

Exhibit 'M13' - Copy of termination order No.BAU/Pb.14/269 dated 19.02.2014 passed by the Chairman Board whereby the services of Karun Kumar were dispensed with / terminated with immediate effect.

Exhibit 'M14' - Copy of application dated 27.02.2014 filed by Karun Kumar to Chairman Board, seeking to review the termination order and for reinstatement.

Exhibit 'M15' - Copy of letter No.BAU/Pb./14/516 dated 14.03.2014 on the subject of appeal issued by the Registrar Board to the Karun Kumar requiring him to personally appear for personal hearing on 26.03.2014 at 3:30 P.M. in the office of Chairman, Office of Director Research & Medical Education in connection with the review application of termination order.

Exhibit 'M16' - Copy of office order No.BAU/Pb./14/688 dated 31.03.2014 whereby his appeal to review the termination order was dismissed.

On 12.04.2022 Ms. Suhinder Kaur - Administrative Officer for the management closed evidence of the management.

8. On 29.08.2022, learned representative for the workman made the statement, recorded separately, to the effect that he did not intend to lead any evidence in rebuttal and closed the same.

9. I have heard argument of the learned representatives for the parties and perused the judicial record. My issue-wise findings are as below:-

Issue No.3 :

10. The issues are overlapping. Thus, issue No.3 is taken up first. Onus to prove this issue is on the claimant-workman.

11. Under this issue the claimant-workman Karun Kumar examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of statement of claim in toto. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W3'.

12. On the other hand, learned representative for the management referred the testimony of MW1 Suhinder Kaur - Administration Officer of Board, who *vide* her affidavit Exhibit 'MW1/A' deposed all the contents of written statement. To support her oral version, learned representative for the management referred document Exhibit 'M1' to Exhibit 'M16'.

13. From the oral as well documentary evidence led by the parties, it comes out that *vide* appointment letter dated 09.05.2011 / Exhibit 'M3', Karun Kumar was appointed on contractual basis on the post of Clerk for a period of 6 months. Contractual rate of his salary was on the basis of DC Rates @ `6,100/-. *Vide* appointment letter dated 28.11.2011 / Exhibit 'M4', Karun Kumar was appointed as Clerk on contractual basis for a period of 6 months from the date of joining and agreed contract rate of salary as per DC rates ₹ 7,000/- per month. *Vide* appointment letter dated 31.05.2012 / Exhibit 'M5' Karun was appointed as Clerk on contractual basis of period of six months and agreed contractual rate of salary as per DC rates was ₹ 7,980/- per month. *Vide* appointment letter dated 03.12.2012 / Exhibit 'M6' Karun Kumar was appointed as Clerk on contractual basis for period of 6 months and agreed contractual rate of salary as per DC rates was ₹ 7,980/- per month. As per appointment letter dated 05.06.2013 the workman was appointed as Clerk on contractual basis for a period of 1 year from the date of joining and agreed contractual rate of salary as per DC rates was ₹ 7,980/- per month.

14. In the appointment letters Exhibit 'M3' to 'M7' the terms & conditions of service were stipulated. As per condition No.1, the vacancy is purely on contract basis and as per condition No.3, the services can be terminated any time without issuing any show cause notice. As per condition No.4, salary will be paid as per contractual rate and as per condition No.12, in case of any dispute decision will be taken by the appointing authorities. As per condition No.13, if any incorrect information is received about any employee, then his services can be dispensed with any time.

15. Undisputedly, the claimant-workman Karun Kumar joined as Clerk on contractual basis with the management on 19.06.2011 and worked as per appointment letter issued for time to time i.e. Exhibit 'M3' to 'M7' up to 19.02.2014. The services of the claimant-Karun Kumar were terminated w.e.f. 19.02.2014 Exhibit 'M13'.

16. The grievance of the claimant-workman is that he was terminated without issuing any charge sheet and conducting any inquiry etc. The aforesaid version of the claimant-workman stands falsified from his own version as well as from documents Exhibit 'M9', 'M10' / Exhibit 'W1', 'M11', 'M12' / Exhibit 'W2', 'M14' / Exhibit 'W3', 'M15' and 'M16'. When put to cross-examination AW1 Karun Kumar state that it is correct that he was given contractual employment in the year 2008/2009. His appointment was on tenure basis which was fixed from time to time. AW1 in cross-examination further state that it is wrong that any notice was given to him before the order of removal from service. It is correct that he has submitted representation after the order of termination. AW1 state that he has gone through letter dated 06.02.2014 (Exhibit 'W1') and it is correct that the same is written by him and the signatures are also genuine. It is wrong to suggest that any termination order was communicated to him and no hearing was granted before the termination from service. He has gone through the reply dated 13.02.2014 to the show cause notice and it is correct that he has submitted the reply and signature on the reply dated 13.02.2014 (Exhibit - 'W2') is of him. He has gone through the letter dated 27.02.2014 (Exhibit - W3) and the same is correct and bears his signatures.

17. The claimant-workman was not only issued show cause notice, admittedly he filed reply to the show cause notice, afforded opportunity of personal hearing before termination. After termination the claimant-workman was again provided opportunity of personal hearing and the review application was dismissed. MW1 in her cross-examination admitted as correct that 2 notices were issued to the workman dated 12.02.2014 and 03.02.2014 Mark 'MX' and 'MY'. MW1 in cross-examination further stated that an inquiry was conducted against the workman before termination and the Chairman himself conducted the inquiry. Mark 'MX' i.e. show cause notice dated 03.02.2014 is proved into evidence by the management *vide* Exhibit 'M9'. Mark 'MY' is copy of letter dated 12.02.2014 issued by the Registrar, Board to Karun Kumar requiring him to appear for personal hearing on 13.02.2014 at 3:30 P.M. before the Chairman of Board in connection with the complaint moved by Vaid Jagjit Singh - Vice Chairman of the Board. The letter dated 12.02.2014 is proved into evidence by the management *vide* Exhibit 'M11'. From Exhibit 'M10' it is proved that the workman filed reply dated 06.02.2014 to show cause notice dated 03.02.2014 / Exhibit 'M9'. From Exhibit 'M12', it is further proved that the workman filed reply dated 13.02.2014 to letter dated 12.02.2014 / Exhibit 'M11'. Besides this the claimant-workman was given personal hearing on 13.02.2014. The reply dated 06.02.2014 and 13.02.2014 are considered in the termination order dated 19.02.2014 / Exhibit 'M13' and the same were found un-satisfactory. On personal hearing dated 13.02.2014 his defence was found unsatisfactory. The same is reflected in the termination order dated 19.02.2014 / Exhibit 'M13'. Even after termination order dated 19.02.2014 on receipt of review application dated 27.02.2014 from the claimant, he was given opportunity of personal hearing *vide* letter dated 14.03.2014 / Exhibit 'M15'. The claimant-workman availed the opportunity. During personal hearing the claimant-workman stated that his earlier reply may be considered. His earlier reply was found unsatisfactory. Finding that the claimant-workman has nothing to say afresh, the review application was dismissed *vide* order dated 31.03.2014 / Exhibit 'M16'.

18. All the aforesaid documents supports the plea of management that the services of the claimant-workman were dispensed with in accordance with the principle of natural justice by issuing show cause notices dated 03.02.2014 and 12.02.2014 to which the claimant-workman filed reply dated 06.02.2014 / Exhibit 'W1' and 13.02.2014 / Exhibit 'W2' respectively. Besides this, the claimant-workman was given personal hearing on 13.02.2014. At the time of hearing, the claimant submitted written submission dated 13.02.2014.

19. In the statement of claim, the claimant-workman concealed the material facts that he was issued show cause notices to which he filed reply and that he was given personal hearing before passing of termination order. Thus, the claimant has not approached the court with clean hands. Besides, the termination order dated 19.02.2014 / Exhibit 'M13' is legal and valid.

20. Accordingly, this issue is decided against the workman and in favour of the management.

Issue No. 1 :

21. Onus to prove this issue is on the management.

22. There is no evidenced from which it could be inferred that the claimant-workman was performing any skilled, manual or technical operation. The claimant-workman was working as Clerk. As per the contents of reply dated 06.02.2014 / Exhibit 'W1' to show cause notice dated 03.02.2014 and the contents of reply dated 13.02.2014 / Exhibit 'W2' to show cause notice dated 12.02.2014 and the contents of the review application dated 27.02.2014 / Exhibit 'W3', the claimant was deployed to work temporarily in the office of Chief Secretary, Medical Cell & Research. The work assigned to claimant Karun Kumar was clerical in nature, which falls within the definition of 'workman' as defined in Section 2(s) of the ID Act.

23. Accordingly, this issue is decided against management and in favour of workman.

Issue No. 2 :

24. Onus to prove this issue is on the management.

25. Learned representative for the management argued that the Board does not fall within the definition of an 'industry', therefore, the present industrial dispute is not maintainable. To support his arguments learned representative for the management referred the case law titled as **Nehru Yuva Kendra Sangathan Versus Union of India, reported in 2000(4) SCT 779**.

26. On the other hand, learned representative for the claimant argued that in reference bearing No.13/1/9539-HII(2)-2018/15895 Harpreet Singh Versus Board of Ayurvedic & Unani System for Medicine decided on 05.07.2018 by the Presiding Officer of this Court, it is held that Board is an 'industry'. The management has filed CWP No.3204/2020 against award dated 05.07.2018 which is pending for hearing in the Hon'ble High Court. Learned representative for the management did not dispute the fact that the aforesaid civil writ petition is pending.

27. To my view, the management Board is working under Punjab Ayurvedic Practitioner Act, 1963. As per the judgment of the Hon'ble Supreme Court of India in case **Bangalore Water Supply & Sewerage Board Versus A. Rajappa & Others, AIR 1978 548 (SC)** the Hon'ble Supreme Court laid down certain guidelines to come to the conclusion whether particular organization is covered under the definition of Section 2(j) of the ID Act :—

- (a) where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human want and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or food) prima facie, there is an industry in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

28. In case **Nehru Yuva Kendra Sangathan Versus Union of India, 2000(4) SCT 779**, the Hon'ble Supreme Court held that functions which Yuva Kendra Sangathan was performing could not be treated as sovereign function which would take it outside the scope of Section 2(j) of the ID Act.

29. In view of the above aforesaid judgments, which are applicable to the facts of the present case to an extent, the activity which is being carried out by the management Board is not covered under the definition of industry as defined under Section 2(j) of the ID Act.

30. Accordingly, this issue is decided in favour of the management and against the claimant-workman.

Relief :

31. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 29th August, 2022.

(Sd.). . .,

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th October, 2022

No. 13/1/9903-HII(2)-2022/15934.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 59/2017, dated 02.09.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJINDER PARSHAD S/O SHRI GHANSHYAM, PERMANENT R/O VILLAGE MEING, P.A. MEING GADHERA, DISTRICT CHAMQLI, UTTARAKHAND, PIN 246444, PRESENTLY C/O HOTEL NEW DIAMOND, PLOT NO. 133, SECTOR 52, KAJHERI, U.T., CHANDIGARH (Workman)

AND

1. PUNJAB FINANCIAL CORPORATION, 95-98, BANK SQUARE, SECTOR 17-B, CHANDIGARH THROUGH MANAGING DIRECTOR.
2. DEPUTY GENERAL MANAGER, PUNJAB FINANCIAL CORPORATION, 95-98, BANK SQUARE, SECTOR 17-B, CHANDIGARH (Management)

AWARD

1. Rajinder Parshad, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed *vide* appointment letter No. PFC/STF-6(169)89/56501 dated 10.11.1989 as Chowkidar on ad-hoc basis at a consolidated salary of ₹ 1,050/-. The workman successfully performed his duties with great dedication, honesty and punctuality. Both parties were entirely satisfied with the conduct of the workman. The workman continued to work without any break throughout his entire service. The conduct of the workman remained unblemished and unspotted throughout the course of employment. Five other namely Chandan Singh, Dinesh Kumar, Sharif Chand, Manjit Singh and Ram Saran were also appointed as Chowkidars on ad-hoc basis but in the regular pay scale of ₹ 750-1350. All the persons named above were doing not only verbatim ward and watch duties in the field but were shouldering similar responsibilities, same duty hours i.e. except the difference in their carry home salaries, everything was same. The persons appointed after him are still working with the employer. From the date of his appointment the workman continuously worked for PFC Management as Chowkidar from 10.11.1989 till year 2002 for more than 14 years. The services of the workman were illegally terminated in the year 2002 in an un-ceremonial, illegal manner without serving any notice, charge-sheet, inquiry or payment of notice pay or retrenchment compensation. The workman has worked for more than 240 days in the year prior to the date of termination. The termination is wrong, illegal, *mala fide*, unfair labour practice, in violation to the principle of natural justice and contrary to the provision of ID Act. As such the workman is entitled to be reinstated with continuity of service, all back wages and other legal entitlements. Workman is a poor person. His family is fully dependent on the wages he earned. Since the date of his termination, the workman has been searching for job but to no avail. The workman has been condemned to life of penury. Similarly services of all the above named employees and some others were terminated by the management but they approached the Labour Court which in lieu of retrenchment ordered payment of lump-sum compensation. The workman did not approach the Labour Court even though his case is similar to other cases. There is no other remedy available to the workman except to submit the present case in present shape. The management verbally terminated the services of the workman in violation to ID Act. At the time of termination workman was neither offer nor paid any financial benefits nor assured re-employment, therefore the termination order is in violation to all mandatory provisions of ID Act. There was breach of Section 25-F of

ID Act. The persons Chandan Singh etc. named above preferred Writ Petition in the Hon'ble High Court of Punjab and Haryana. The Hon'ble High Court while deciding the Writ Petition No. 5234 of 2014 passed an order dated 11.12.2015 directing that instead of partly compensation offered by the Labour Court, they (petitioner of said writ and other petitioners) are entitled to compensation calculated @ ₹ 65,000/- of each years of their service payable as per the directions contained in above number writ petition within a stipulated period otherwise it would carry interest @ 18% per annum till realisation. The case of workman is similar to above referred writ petition. The services of the workman were also terminated in the same manner as the services of the workman of the above said writ petition and other petitioner were terminated. Therefore, the workman is entitled to parity of treatment even though he had not approached the court along with the writ petitioners and other petitioners. The workman preferred a writ petition No. CWP 17301 of 2016 which was withdrawn with liberty to raise dispute under ID Act. The workman had initiated conciliation proceedings and issued demand notice dated 07.04.2007 but the conciliation proceedings failed on 18.06.2017. The employer appeared before the Assistant Labour Commissioner-cum-Conciliation Officer but no amicable settlement could be achieved and the workman was advised to refer 2-A of ID Act. Prayer is made that the termination order shall be revised and the workman shall be reinstated into service with seniority, continuity in service, full back wages and with all other applicable service benefits or compensation as per the order of Hon'ble High Court in CWP No. 5234 of 2014 dated 11.12.2015.

2. On notice the management No.1 &2 contested the claim statement by filing written reply on dated 21.03.2018 wherein it is submitted that the written reply is being filed by Shri Manjit Singh Law Officer in the management corporation who is fully conversant with the facts of the present case and is competent to present the reply before this Court. Resolution dated 26.08.2013 to this effect is passed by the Board of Director of the Corporation. Further preliminary objections are raised on the ground that the claim statement is time barred. The workman has no cause of action. The workman has not approached the court with clean hands and concealed the actual and factual position from the knowledge of this court. Thus, the claim statement deserves to be dismissed being not maintainable.

3. Further on merits the residential address of the workman is denied for want of knowledge. The fact that the workman was appointed *vide* letter No. PFC/STF-6(169)89/56501, dated 10.11.1989 as Chowkidar on ad-hoc basis at a consolidated salary of ₹ 1,050/- is replied in a formal manner being matter of record. The facts that the workman successfully performs his duties with great dedication, honesty and punctuality and that the service record of the workman remained unblemished and unspotted throughout his entire service and further that 5 others namely Chandan Singh etc. were also appointed Chowkidar on ad-hoc basis on regular pay scale ₹ 750-1,350 are denied for want of knowledge. It is stated that workman was terminated strictly as per the contract entered between the workman and the corporation. The workman was appointed on ad-hoc basis only. The services of the workman were terminated when his services were no more required as also mentioned in the appointment letter. It cannot be believed that since the termination of the job in the year 2002 till date i.e. year 2018, the workman is still searching for a job, sitting idle and is not doing any job. It is clear from the memo of parties itself, wherein the address of workman was given as C/o Hotel New Diamond, Village Kajheri, Chandigarh, where he is working as a Watchman/Guard and is earning a handsome amount. The workman is a greedy person who after 16 years has filed the present reference with *mala fide* intention to extract money from the corporation. Some of the similarly placed daily wage Chowkidar filed writ petitions before the Hon'ble high court of Punjab and Haryana, seeking parity with the regular appointed Chowkidars which were tagged with the main petition bearing No. CWP 17966 of 2003 which was decided and dismissed on 30.11.2006 in view of the order passed in LPA No. 1946 of 2001. Thereafter, aggrieved by said order the workmen preferred Civil Appeal No. 9899 and 9905 of 2011 before the Hon'ble Apex Court. After hearing the parties the said appeals were also dismissed on 16.08.2017. The termination of the workman is well in terms of the appointment letter as well as in terms of the judgment dated 18.04.2001 passed by the Hon'ble High court of Punjab and Haryana in CW No. 19444. Hence, the workman is not entitled to any benefit of any kind. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with costs.

4. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 25.07.2018:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is time barred ? OPM
3. Relief.

6. In evidence workman Rajinder Parshad examined himself as AW1 who tendered his affidavit Exhibit AW1 along with documents i.e. copy of his appointment letter bearing reference No. PFC/STF-6(169)89/56501 dated 10.11.1989 issued by Managing Director, PFC, Chandigarh *vide* Exhibit AW2, copies of representations dated 15.03.2006, 10.04.2008, 04.02.2019, moved by the workman to the Branch Manager, PFC, District Patiala (Punjab) *vide* Exhibit AW3 to Exhibit AW5 respectively and another copy of representation dated nil moved by workman to M.D. PFC, Chandigarh *vide* Exhibit AW6, copy of award dated 06.12.2013 passed by Smt. Ramesh Kumari, Presiding Officer, Industrial Tribunal, Patiala in reference No. 201/2006 titled as Naib Singh Vs PFC and another *vide* Exhibit AW4/7, copy of judgment dated 11.12.2015 passed by the Hon'ble High Court in CWP No. 5219 of 2014 titled as Naib Singh Vs Presiding Officer, Industrial Tribunal Labour Court, Patiala *vide* Exhibit AW/8 and copy of order dated 26.08.2016 passed by the Hon'ble High Court in CWP -17301 of 2016 titled as Rajinder Parshad Vs Punjab Financial Corporation and another *vide* Exhibit AW/9. On 31.08.2021 learned representative for the workman closed evidence of the workman.

7. On the other hand management examined MW1 Surinder Kumar who tendered his affidavit Exhibit MW1/A along with documents i.e. authority letter bearing Ref. No. PFC/STF/2021/9520 dated 15.11.2021 issued by Sh. Manjit Singh, Law Officer, on behalf of the management in favour of Shri Surinder Kumar, Assistant Manager, Gr.II, PFC *vide* Exhibit R1/A, copy of appointment letter PFC/STF-6(169)89/56501 dated 10.11.1989 issued to Rajinder Parshad by the Managing Director, PFC, Chandigarh *vide* Exhibit R1/1, copy of joining report of Rajinder Parshad (joined duty w.e.f. 10.11.1989 forenoon) *vide* Exhibit R1/1 (Exhibit R1/1 is numbered twice, in order to avoid any ambiguity, the joining report is here-in-after referred as R1/X), copy of order Ref. No. PFC/681 dated 14.08.2022 issued by Managing Director, PFC, Chandigarh to Rajinder Parshad whereby the Corporation has terminated the services of Rajinder Parshad w.e.f. 23.08.2002 *vide* Exhibit R1/2, copy of order dated 18.04.2001 passed by the Hon'ble High Court in CWP No. 19444 of 1998 titled as Bakhtaur Singh and Ors. Vs The Punjab Financial Corporation, copy of order dated 18.04.2001 passed by the Hon'ble High Court in CWP No. 6571 of 2000 titled as Bakhshish Singh and Ors. Vs The Punjab Financial Corporation, Sector-17 B, Chandigarh, through its M.D. *vide* Exhibit R1/3, copy of order dated 30.11.2006 passed by the Hon'ble High Court in CWP No. 17996 of 2003 titled as Nimral Singh Vs The Punjab Financial Corporation, Sector-17 B, Chandigarh, through its M.D. *vide* Exhibit R1/4, copy of order dated 30.11.2006 passed by the Hon'ble High court in LPA No. 1946 of 2001 titled as Prem Chand and Ors. Vs Punjab Financial Corporation and Ors. *vide* Exhibit R1/5, copy of order dated 16.08.2017 passed by the Hon'ble Supreme Court in Civil Appeal No. 9899 of 2011 @ SLP (C) No. 20993 of 2006 titled Prem Chand and Ors. Vs. Punjab Financial Corporation and other etc. with Civil Appeal No. 9905 of 2011 @ SLP (C) No. 3884 of 2007 *vide* Exhibit R1/6. It is pertinent to mention that during cross-examination of workman Rajinder Parshad/AW1, the termination letter dated 14.08.2002/Exhibit MX was put to him. On 02.09.2022 Id. representative for the management closed evidence on behalf of the management.

8. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise finding are as below:-

Issue No. 1 :

9. Onus to prove this issue is on the workman.

10. Under this issue workman Rajinder Parshad examined himself as AW1 who *vide* his affidavit Exhibit AW1/A deposed the averments of statement of claim in toto and supported his oral version with documents Exhibit AW2 to Exhibit AW9.

11. On the other hand ld. representative for the management referred the testimony of MW1 Surinder Kumar who vide his affidavit Exhibit MW1/A deposed the entire contents of the written statement and supported his oral version with documents Exhibit R1/1 to Exhibit R1/6 And R1/X.

12. From the oral as well as documentary evidence lead by the parties it comes out that the workman Rajinder Parshad vide appointment letter No. PFC/STF-6(169)89/56501 dated 10.01.1989/ Exhibit AW/2 as well as Exhibit R1/1 was appointed as Chowkidar on ad-hoc basis for guarding the premises acquired by the corporation. Vide Exhibit R1/X, Rajinder Parshad joined at the post of Chowkidar ad-hoc w.e.f. 10.11.1989. As per appointment letter Exhibit AW/2 as well as Exhibit R1/1, Rajinder Parshad was appointed as Chowkidar on ad-hoc basis for a period of 89 days or till the disposal of the premises where he was deputed, whichever is earlier. Undisputedly Rajinder Parshad continued to perform his duty as Chowkidar w.e.f 10.11.1989 to 23.08.2002 (workman being terminated w.e.f. 23.08.2002).

13. The plea taken by the workman that his services were terminated by the management with verbal order stands falsified from his own cross-examination. When put to cross-examination, AW1 Rajinder Parshad (workman) stated that he was posted as Chowkidar. He does not remember the date or year of termination. AW1 further stated that he identify his signatures on letter dated 14.08.2002/Exhibit MX shown to him, at point A. This fact goes to prove that Rajinder Parshad received the termination letter Exhibit MX against proper receipt i.e. by putting his signatures thereon. The plea of workman that he was communicated termination order through verbal order stands falsified.

14. Learned representative for the workman argued that 5 other workmen namely Chandan Singh, Dinesh Kumar, Sarif Chand, Manjit Singh and Ram Saran were also appointed ad-hoc Chowkidars along with the workman on regular pay scale of ₹ 750-1350 who are still working in the department. On the other hand the management denied that the above named employees are still working with the management. The workman did not place on record any document to support his plea that the workmen Chandan Singh and others named above are still working with the management i.e. PFC.

15. The perusal of order dated 18.04.2001 of Hon'ble High Court/Exhibit R1/3 bearing CWP No. 19444 of 1998 titled as Bakhtaur Singh and Ors. (all working as Chowkidars and doing ward and watch duties in the field and care of Punjab Financial Corporation Chandigarh) Vs. The Punjab Financial Corporation Chandigarh through its Managing Director, would reveal that 37 ad-hoc Chowkidars of PFC filed a Writ Petition before the Hon'ble High Court seeking regularisation of their services from the date of their appointment with all consequential benefits, equal pay for equal work on the ground that the petitioners are performing the same functions and measures of their responsibility as their regular counter-parts are carrying on. The said Writ Petition was disposed off as per the Order passed in CWP No. 6571 of 2000 titled as Bakhshish Singh and Ors. Vs. The Punjab Financial Corporation and others. The CWP No. 6571 of 2000 was dismissed vide order dated 18.04.2001. The relevant Para 9 of aforesaid judgment dated 18.04.2001 is reproduced as below :

"9. As I have stated above, the main grouse of the petitioner is that they should be regularised. In order to get this type of relief it is incumbent that there must be a regular post. The need of creation of the posts is a matter of executive policy. The High Court is not in a position to direct the respondent-Corporation to regularise the services of the petitioners when there is no regular post to that effect. This view was so adopted by the Hon'ble Supreme Court in State of U.P. & Ors. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh & Anr. 1996(1) SLR 303. Similar view was also adopted in State of Himachal Pradesh v. Nodha Ram and others, 1996(1) SLR 648, wherein it was observed that when the respondents were engaged on daily wages on muster roll in Central Scheme and the project has been completed and closed due to non-availability of funds, the High Court was not justified in giving the directions to regularise the services of such persons because no vested right is created in temporary employment. In the present case also no vested right has been created in the petitioners so that they may claim regularisation of their service. Otherwise also, the appointment of the petitioners was not by a selection

committee. They were appointed purely to fill an arrangement because the Corporation was eager to deploy some Chowkidars to perform watch and ward duty so that the units which have been resumed by the Corporation under Section 29 may not be damaged. The appointment letters of the petitioners clearly indicates that their appointments were purely on ad hoc and their services could be terminated at any time. In State of Haryana and others, etc. etc. v. Piara Singh and others etc. etc., AIR 1992 SC 2130 the Hon'ble Supreme Court has written a note of caution for the law courts before ordering regularisation of the services and it was held by the Hon'ble Supreme Court that Court must act with due care and caution while issuing such type of directions. When there is no regular post available with the Corporation, how any directions can be passed. In Ranbir Singh and another v. The State of Haryana and others, 1998(2) RSJ 535, the Full Bench of this Court held that there cannot be a question of equal pay for equal work for daily wage workers who have no equation with a regular employee for the purpose of pay scale. The petitioner fall in a separate category. They cannot be treated at par with those Chowkidars who are on the regular services of the Corporation."

16. The workman in the present case was terminated from services w.e.f. 23.08.2002 vide order dated 14.08.2002/Exhibit MX. In Exhibit MX it is mentioned that in view of the directions of the Hon'ble Punjab and Haryana High Court, Chandigarh dated 18.04.2001 in CWP No. 19444 vide which the writ petition filed by the daily wage Chowkidars was dismissed. The corporation has accordingly, directed to terminate your services w.e.f. 23.08.2002.

17. In view of the judgment dated 18.04.2001, in CWP No. 19444 of 1998 along with CWP No. 6571 of 2000, the workman Rajinder Parshad is neither entitled to regularisation nor re-instatement nor pay equal to regular employees.

18. Another daily wage Chowkidar Nirmal Singh filed a CWP No. 17996 of 2003 against the Punjab Financial Corporation Chandigarh, seeking to regularise the services and the benefits of equal pay for equal work on the ground that petitioner is performing the same duties, functions and measures of responsibilities as his regular counter-parts are carrying on. The said CWP No. 17996 of 2003 was decided by the Hon'ble High Court vide order dated 30.11.2006 vide Exhibit R1/4. Order dated 30.11.2006 is reproduced as below :

"This writ petition has been admitted, to be heard with LPA No.1946 of 2001, in which an identical question of law has been raised on the same facts. In the index of this writ petition, it was specifically mentioned as follow :—

"Letters Patent Appeal No.1946/2001; Prem Chand and Others Versus Punjab Financial Corporation arising against the judgment dated April 18, 2001 passed in CWP No.6571/2000, Bakshish Singh and Others Versus Punjab Financial Corporation and Others, dismissing 6 writ petitions filed by the similarly situated ad hoc Chowkidars like the petitioners, is pending in this Hon'ble Court."

LPA No.1946 of 2001 has been dismissed by a detailed order passed by this Bench today, i.e., 30.11.2006. This writ petition is accordingly dismissed for the reasons stated in the judgment rendered in LPA No.1946 of 2011."

19. The management has placed on record copy of **judgment dated 30.11.2006 of Hon'ble High Court in LPA No. 1946 of 2001 titled as Prem Chand and Ors. Vs. Punjab Financial Corporation and Ors.** Aggrieved from the orders passed in CWP No. 17996 of 2003 and LPA No. 1946 of 2001, workmen filed **appeal No. 9899 of 2001 @ SLP(C) No. 20993 of 2006 titled as Prem Chand and Ors. Vs. Punjab Financial Corporation and Ors, tagged with Civil Appeal No. 9905 of 2011@SLP(C)No. 3884 of 2007**, the said appeals were dismissed by the Hon'ble Apex Court vide order dated 16.08.2017/Exhibit R1/6.

20. The judgments referred by the Id. representative for the management vide Exhibit R1/3 to Exhibit R1/6, relates to regularisation and equal pay for equal work. As per the aforesaid judgment the workman Rajinder Parshad is neither entitled to regularisation nor pay equal to regular employee.

21. As far as the claim of the workman with regard to retrenchment compensation is concerned, the claimant Rajinder Parshad worked as Chowkidar from 10.11.1989 to 23.08.2002 continuously for a period of about 12 years, 9 months and 13 days. In this manner the claimant Rajinder Parshad worked for more than 240 days in the year immediately preceding the date of his termination. Thus, the claimant falls in the definition of workman as defined in Section 2(S) of ID Act. The workman Rajinder Parshad was terminated from service on 23.08.2002 without payment of any retrenchment benefits which amounts to violation of Section 25-F of the ID Act.

22. In the judgment dated 11.12.2015 passed by the Hon'ble High court in CWP NO. 5219 of 2014 titled as Naib Singh Vs. Presiding Officer Industrial Tribunal Patiala, the workman was held entitled to the retrenchment compensation to the tune of ₹ 65,000/- for every year of service rendered by him. The workman Rajinder Parshad is similarly situated as the workman/workmen in CWP No. 5219 of 2014. Therefore, the workman Rajinder Parshad is entitled to the retrenchment compensation to the tune of ₹ 65,000/- for every year of service rendered by him with the Punjab Financial Corporation. As discussed above the total period of service of workman Rajinder Parshad is 12 years and 9 months i.e. 153 months. The total compensation for 153 months calculated @ ₹ 65,000/- per annum comes to ₹ 8,28,750/-.

23. Accordingly, this issue to the extent of retrenchment compensation is proved in favour of the workman and against the management and this issue to the extent of regularisation of service and equal pay for equal work is proved against the workman and in favour of the management.

Issue No. 2 :

24. Onus to prove this issue is on the management.

25. Learned representative for the management raised objections that in view of the demand notice dated 20.06.2017, the present reference was presented on 25.08.2017. The services of the workman were terminated on 23.08.2002. The workman approached the Tribunal after about 15 years from the date of cause of action which accrued on 23.08.2002.

26. To my opinion the denial of retrenchment compensation is a recurring cause of action. Consequently, the bar of limitation does not apply.

27. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is partly allowed. The management is directed to pay retrenchment compensation to the tune of ₹ 8,28,750/- to the workman within 3 months from the date of publication of the award in the Government Gazette, failing which to pay interest @ 6% per annum from due date till actual realization. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

The 2nd September, 2022.

(Sd.). . .,

(JAGDEEP KAUR VIRK),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

Secretary Labour,
Chandigarh Administration.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 21st November, 2022

No. 231 Rule Cell/V.Z.27.—Hon'ble the Chief Justice has been pleased to amend the 'Scheme regarding appointment of Law Researchers in the Punjab and Haryana High Court' by omitting Rule 7(ii) of *ibid* Scheme.

After Omission of Rule 7(ii), Rule 7 reads as under :—

7. Number of Law Researchers.

Every Hon'ble Judge shall be entitled to two Law Researcher at a given time.

BY ORDER OF HON'BLE THE CHIEF JUSTICE

(Sd.). . .,

(ARUN KUMAR AGGARWAL)

Registrar(Rules)

For Registrar General